

## FIGHT SUGAR REBATE CHARGE

THE TRUST AND N. Y. CENTRAL QUESTION ELKINS LAW.

Charge to Argue in the U. S. Court Today Against Its Applicability to Transactions Before the Act Was Passed—See Case Against the Central All In.

The New York Central Railroad Company was brought to the bar in the United States Circuit Court, Criminal Branch, for the second time yesterday to stand trial on a charge of giving rebates to the American Sugar Refining Company. The case of the Government was completed in remarkably quick time, and was all ready to go to the jury, except for summing up at the close yesterday afternoon.

The most interesting development of the trial came at the close, when announcement was made that a recess in the trial would be taken to-day in order that Joseph H. Choate might address the court on the constitutionality of the Elkins law, or rather its applicability to the charge on which the railroad is being tried.

This charge sets forth the making of an arrangement between Lowell M. Palmer, traffic manager of the American Sugar Refining Company, and F. L. Pomeroy, assistant traffic manager for the railroad, in July, 1902, prior to the passage of the Elkins law, under which the road is being tried, to give and take rebates of six cents a hundred pounds off the schedule rate of 21 cents on all sugars for Cleveland. About \$26,000 was paid over by the road in rebates after the passage of the act, it is further alleged.

The railroad company contends that the Elkins act contemplated no punishment for illegal shipments in the past, even if the money thereon was paid after the law was passed. There is a complementary indictment against the American Sugar Refining Company, which will be brought to trial immediately after the present trial is concluded. The indictments stand or fall together, and Mr. Choate will argue the point relating to the *ex post facto* character of the Elkins law on behalf of the two corporations.

It is understood that the American Sugar Refining Company will make a strong fight on its own behalf. Alton S. Parker has been retained in addition to Mr. Choate to aid in fighting the case. Mr. Parker will have entire charge of the trial, assisted by John E. Parsons and other members of the firm of Parsons, Clouston & McVaine, counsel to the trust.

The railroad was represented yesterday by Austin G. Fox, John Lindsay and Albert H. Harris. United States District Attorney Henry H. Stimson, with his assistants, Henry A. Wise, Felix Frankfurter and John W. H. Crim, who have prepared the enormous documentary evidence in the case, were present on behalf of the government.

The defendant has already demurred to the indictment on the ground which Mr. Choate will take up to-day in more extended fashion. Judge Holt, who is sitting in all the rebate cases, threw this out. Nevertheless, the attorneys for the road pursued tactics which gave the impression that they expected to win out ultimately on the point of the non-applicability of the Elkins law to the alleged illegal transactions. The government, on the other hand, will contend in its summing up to the jury, it is expected, that such a payment was all the more illegal in view of the fact that the railroad might well have refused to pay over the rebates on the ground that it was not illegal, although the payment had been made at a time when it was not illegal.

It developed early in the trial that Messrs. Fox and Lindsay for the railroad had said the shipment of the sugars covered by the indictment, and the existence of all the documentary evidence gathered by the government showing the alleged transactions, were covered by the Elkins law. This was made interesting, however, only by the fact that Mr. Fox said:

"There is a good deal of talk in the air just now about a 'square deal,' and I think we ought to have it."

Mr. Stimson rejoined with some heat that Mr. Fox had no justification whatever in saying such a thing, and he made it plain, he said, "what Mr. Fox calls a stipulation of fact made by agreement with us is no stipulation at all, but merely an admission of fact made by the defendant to save the officials of the defendant railroad company the business inconvenience of coming down here and testifying to the hundred and one transactions involving the alleged rebates. If Mr. Fox wishes to withdraw his admission he is at perfect liberty to do so."

Mr. Fox then stuck to the general admission which the railroad proposed to put into evidence and read to the jury one of the letters in which Lowell M. Palmer called on Pomeroy for the payment of the rebates. Mr. Fox said that the letter, which was sent to Mr. Pomeroy, was not a request for a rebate, but a statement of fact. Mr. Palmer, traffic manager of the American Sugar Refining Company in 1902, and the man who made the arrangements for the alleged rebates, Mr. Palmer aroused some amusement by saying with a smile that he had no authority to adjust claims on behalf of the trust. Perhaps you can refresh your memory by a glance at this," said Mr. Stimson, handing him a letter press book of the trust containing a copy of a letter written to Mr. Palmer by H. H. Fox, executive of the trust, early in 1902, giving him authority to adjust claims.

"Yes, I see that this does give me authority to adjust claims, but let me make it plain," said Mr. Palmer, who, probably against his will, will be the government's star witness in the trial of the sugar trust.

Mr. Palmer testified that he had a special bank account for the traffic department in the Market and Fulton National Bank, into which the money received from railroads went and out of which he paid the salaries of T. P. Riley, the big traffic expert of the trust, and the other men under him.

"Did you go to see Mr. Pomeroy at his office in the Grand Central station on July 21, 1902?" asked Mr. Stimson.

"I did."

"And what did you say to him?"

"I told him that our customers, in the West and at Cleveland were complaining of the high schedule rate of 21 cents on sugars, and asking us to route their sugar by the all water route, which cost some thirteen cents a hundred only. Of course, this was much lower. But I told Mr. Pomeroy that our customers were threatening to transfer their trade to competitors who would route their sugar by water."

"Well, Mr. Pomeroy consented to make a rate for us. We had a talk, and Mr. Pomeroy's stenographer drew up a written memorandum of the arrangement we came to. You have that, I believe."

Mr. Stimson did, and proceeded to read it. This contained several clauses, the first of which were:

**BANKING.** Every facility for the transacting of the banking business of individuals, firms and corporations. Inquire

**THE EQUITABLE TRUST COMPANY OF NEW YORK**

Fifteen Nassau Street  
Capital, \$3,000,000  
Surplus, \$10,300,000  
Interest allowed on daily balances, subject to check.

of the rebates, \$26,181, to lighterage, demurrage and the like, so that the railroad's books were straight. Pomeroy, who was the treasurer of the road, had a cashier's draft of the Bank of Buffalo on the Chemical Bank of New York on April 9, 1903. This was sent to Palmer, who deposited it in the Market and Fulton National Bank. The transactions were all safely covered, according to the law at the time. But under the recent decision of the Supreme Court in *Hale vs. Henkel* the Federal authorities used their new right to require corporations to produce evidence in their hands even against themselves, and this check and the other documentary evidence were secured.

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